

#### § 842.46

Tort Claims Act should be applied with respect to the Military Claims Act.

(b) The statutory time period excludes the day of the incident and includes the day the claim was filed.

(c) Consider claims filed after the statute has run when:

(1) The United States is at war or in an armed conflict when the claim accrues, or

(2) The United States enters a war or armed conflict after the claim accrues, and

(3) Good cause is shown. A claim is barred by the statute of limitations if it is filed more than 2 years after the good cause ceases to exist or the war or armed conflict ends. Congress or the President establishes the beginning and end of war or armed conflict.

#### § 842.46 Who may file a claim.

(a) Owners of the property or their authorized agents may file claims for property damage.

(b) Injured persons or their duly authorized agents may file claims for personal injury.

(c) Duly appointed guardians of minor children or any other persons legally entitled to do so under applicable local law may file claims for minors' personal injuries.

(d) Executors or administrators of a decedent's estate or another person legally entitled to do so under applicable local law, may file claims based on:

(1) An individual's death.

(2) A cause of action surviving an individual's death.

(e) Insurers with subrogation rights may file claims for losses paid in full by them. The parties may file claims jointly or individually, to the extent of each party's interest, for losses partially paid by insurers with subrogation rights.

(f) Authorized agents signing claims show their title or legal capacity and present evidence of authority to present the claims.

#### § 842.47 Who are proper claimants.

(a) Citizens and inhabitants of the United States.

(b) U.S. military personnel and civilian employees.

#### 32 CFR Ch. VII (7-1-99 Edition)

NOTE: These personnel are not proper claimants for personal injury or death incident to service.

(c) Persons in foreign countries who are not inhabitants of the foreign country.

(d) States, state agencies, counties, or municipalities, or their political subdivisions.

(e) Prisoners of war or interned enemy aliens.

NOTE: These individuals are proper claimants for personal property damage but not for personal injury.

(f) Property owners, their representatives, and those with certain legal relationships with the record owner, including mortgagors, mortgagees, trustees, bailees, lessees and conditional vendees.

(g) Subrogees to the extent they have paid for the claim in question.

#### § 842.48 Who are not proper claimants.

(a) Governments of foreign nations, their agencies, political subdivisions, or municipalities.

(b) Agencies and departments of the U.S. Government.

(c) Nonappropriated fund instrumentalities.

(d) Subrogees of § 842.48(a), (b), and (c) of this part.

(e) Inhabitants of foreign countries.

#### § 842.49 Claims payable.

(a) Claims arising from negligent or wrongful acts or omissions committed by United States military or civilian personnel while acting in the scope of their employment.

(b) Claims arising from noncombat activities of the United States, whether or not such injuries of damages arose out of the negligent or wrongful acts or omissions by United States military or civilian employees acting within the scope of their employment.

(c) Claims for damage to bailed property under § 842.49(a) or (b) of this part, where all of the following are present:

(1) The United States armed forces assumed the duties of a bailee.

(2) The bailor did not assume the risk of loss by express agreement.

(3) Authorized United States armed forces military or civilian personnel acting in their official capacity properly accepted the property.

(d) Claims for loss or damage to:

Department of the Air Force, DoD

§ 842.50

(1) Insured or registered mail under § 842.49(a), (b), or (c) while in the possession of the United States armed forces military or civilian personnel.

(2) Minimum fee insured mail, but only if it has an insurance number or requirement for hand-to-hand receipt while in the possession of the United States armed forces military or civilian personnel.

(3) Any mail in the possession of the US Postal Service or a Military Postal Service due to an unlawful or negligent inspection, search, or seizure conducted in an oversea military postal facility, under orders of armed forces personnel.

(e) Claims for property damage of US military personnel under conditions listed in paragraphs (a) and (b) of this section, where the damage occurred on a military installation and is not payable under the Military Personnel and Civilian Employees' Claims Act.

(f) Claims filed by DOD military or civilian health care providers or legal personnel for their personal liability by settlement or judgment, to include reasonable costs of such litigation, for their common law tortious acts committed within the scope of their employment under circumstances described in 10 U.S.C. 1089(f) and 10 U.S.C. 1054(f).

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32076, Aug. 7, 1990]

**§ 842.50 Claims not payable.**

Exclusions listed in § 842.50 (a) through (l) of this part, are based on the wording of 28 U.S.C. 2680. The remainder are based either on statute or court decisions. The interpretation of these exclusions is a Federal question decided under Federal law. Where State law differs with Federal law, Federal law prevails. A claim is not payable under this subpart if it:

(a) Is based on an act or omission of an employee of the government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. Do not deny claims solely on this exception without the prior approval of HQ USAF/JACC.

(b) Is based on the exercise or performance or the failure to exercise or perform a discretionary function or

duty on the part of a Federal agency or an employee of the government, whether or not the discretion involved is abused. Do not deny claims solely on this exception without the prior approval of HQ USAF/JACC.

(c) Arises out of the loss, miscarriage, or negligent transmission of letters or postal matter, except those claims payable under § 842.49.

(d) Arises with respect to the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise, or any other law enforcement officer.

(e) Is cognizable under the Suits in Admiralty Act or under the Public Vessels Act.

(f) Arises out of an act or omission of any employee of the government in administering the provisions of the Trading With the Enemy Act.

(g) Is for damages caused by the imposition or establishment of a quarantine by the United States.

(h) Arises out of an assault or battery, unless the assault or battery arises out of the acts or omissions of investigative or law-enforcement officers of the US Government, or arises out of the performance of medical, dental or related health care functions.

(i) Arises out of false imprisonment, false arrest, malicious prosecution or abuse of process, unless such actions were committed by an investigative or law enforcement officer of the United States who is empowered by law to execute searches, seize evidence, or make arrests for violations of federal law.

(j) Arises out of libel, slander, misrepresentation, or deceit.

(k) Arises out of interference with contract rights.

(l) Arises from the fiscal operations of the Department of the Treasury or from the regulation of the monetary system.

(m) Arises out of the combat activities of the military or naval forces, or the Coast Guard, during time of war.

(n) Arises from activities of the Tennessee Valley Authority.

(o) Arises from the activities of the Panama Canal Company.